IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6716 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI MAJITHIA

Versus

PG RAMRAKHIANI

Appearance:

MR PJ MEHTA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/01/2001

ORAL JUDGEMENT

This petition has been filed for quashing the impugned order dated 8-5-1996 passed by the Additional Chief Secretary, Home Department, State of Gujarat, whereby the petitioner has been blacklisted.

2. The petitioner sent a letter dated 25-4-1997 to

the Collector, Jamnagar to supply a copy of the impugned order. It is stated that by the letter dated 1-5-1997 the petitioner's name has been placed in the black list and the order is made for the purpose of official use. Hence, the copy of the impugned order cannot be issued to the petitioner. It is also stated that it was published in one local newspaper namely "Jamnagar Bhumi" where the petitioner is said to be a blacklisted. The petitioner applied before the respondent no. 2 District Superintendent of Police (DSP), Jamnagar to issue a character certificate for the purpose of obtaining video licence from the District Magistrate, Jamnagar. The respondent no. 2 refused to issue such certificate under the pretext of the order of blacklisting dated 8-5-1996. The petitioner also made representation in person before the Additional Chief Secretary, Gujarat State on 29-8-1997 in "Lok Darbar" by putting a question no. 337 regarding blacklisting which was replied in negative. The application of the petitioner for obtaining the video licence and character certificate from the respondent no. 2 were denied. By means of this petition, the petitioner has challenged the action of the respondents on the ground that the actions of the respondents are illegal, arbitrary and violative of Article 19 (1) (g) of the Constitution of India and right of expression, liberty of representation as well as freedom of speech and the petitioner was prevented from communication in the Government against bribery, corruption, misappropriation, forged and irregularities committed and established in the Government sector. Hence, the impugned order has been passed due to burning and headache problems of people canvasing before the Government Authority. The impugned order and action of the respondent attack on livelihood and business activities by not issuing character certificate for obtaining the video licence. He has relied on the decision of the Supreme Court in the case of M/s.. Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and another, reported in AIR 1975 SC 266, wherein, it has been held as under :

"Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purpose of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before the he is put on the blacklist. The Government cannot choose to

exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling. Where the blacklisting costs a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion". Hence, a person must be given an opportunity of hearing before his name is put on the black list."

3. The respondents have filed an affidavit-in-reply through the under Secretary to the Government of Gujarat, Home Department, wherein it is stated that the petitioner was appointed as a Clerk in Revenue Department of Jamnagar District on 1-4-1964 and his conduct during service was not found befitting a Government Servant and hence under the provisions of the Gujarat State Services (Conduct) Rules, 1971 actions were taken against him. The petitioner remained absent from service without leave from 1-6-1984 to 29-1-1986. His absence was considered as dereliction of duty and misconduct and he was liable for the same as per Rule 3 (1) Sub-rule 2 and 3 of the Gujarat State Services (Conduct) Rules, 1971 and the petitioner was held liable under the aforesaid Rule and therefore a charge sheet was filed against him on 29-1-1986 and subsequently he was dismissed from service on 8-8-1988. The petitioner preferred an appeal against that dismissal order. The appeal was allowed and against that the State of Gujarat filed Special Civil Application No. 3235/89 before this Court which was dismissed by the order dated 25-10-89. Thus, the petitioner was again reappointed as Deputy Mamlatdar vide order dated 18-10-1989. Subsequently the petitioner was not found to be befitting a Government servant and once again a charge sheet came to be issued against the petitioner. Accordingly, the petitioner was dismissed vide order dated 28-10-1989 and against that dismissal order the petitioner has not filed any appeal. The petitioner filed Regular Civil Suit No. 7/12 in the Court of

Khambhalia against the order of charge sheet dated 4-8-1992. The Civil Court stayed the order in that matter. The respondents filed Civil Misc. Appeal No. 85/92 in the District Court, Jamnagar wherein the District Court stayed execution and implementation of the order of the Civil Court and the proceedings were permitted to be continued. It is stated that the petitioner is carrying on unconstitutional activities as President of the Revenue Employees' Association, Jamnagar while functioning as a Mamlatdar "Government Servant" on duty. A report was sent to A.C.S. Revenue Department to cancel the sanction of the association or in the alternative to remove the petitioner from the said post vide confidential letter No. MKM/2/2774/92 dated 13-12-1992. Thereafter, the Revenue Department required the opinion for placing the petitioner in the black list. The opinion was sent to the Revenue Department by the District Magistrate vide letter dated 16-12-1995. On the basis of the proposal of the Revenue Department in Home Department ordered to place the petitioner in black list vide the impugned order dated 8-5-1996. The petitioner required the copy of the Circular in Lok Darbar. The petitioner was informed that as no press note has been issued by this office and the order putting the petitioner in the black list if for office purpose is a confidential communication and no copy of the same can be issued to him. On the basis of the unconstitutional activities carried on by the petitioner and looking to his past checkered history of tampering with the Government records, falsely attempting to establish his attendance and in view of which a charge sheet was issued against him and as a consequence the order of dismissal was passed and that has been passed on the basis of the Collector's opinion of black listing. The petitioner filed Special Civil Application No. 6716/97 in which this Court passed the order directing the petitioner to apply afresh within 10 days from the date of receipt of such order, the competent authority was directed to decide the application of the petitioner within stipulated period of three months from the date of receipt of the application. It is further stated that the respondents have not received any application from the petitioner as directed by this court and the petitioner is no longer interested in obtaining "No Objection" certificate. On the basis of the proposal of the Revenue Department, Government in Home Department ordered to place the petitioner in black list. That order was received on 20-5-1996 and the copy of the said order was forwarded to the District Development Officer, District Superintendent of Police, Sub Divisional Magistrate, Jamnagar/Khambhalia, all Deputy Collectors

and Mamlatdars and all branches of this office. It is further stated that the petitioner had filed Civil Application No. 4748/98 in Special Civil Application No.6716/97 and this Court passed the order dated 30-7-1998 directing the petitioner to make afresh application for obtaining video licence within 10 days from the date of issue of the order and the competent authority was directed to decide that application within a period of three months from the date of receipt of the application. But the petitioner has not filed any fresh application neither in time limit scheduled by this Court nor till the day of filing of this affidavit-in-reply.

4. In the rejoinder, the petitioner has stated that as the owner of the premises for Video Project has refused to give his premises on rental basis due to court litigation. Hence, the petitioner was not interested to obtain the video licence and he has not applied for the same.

5. Considering the facts and circumstances of this case and the decision of the Apex Court referred to above cited by the learned counsel for the petitioner in support of his contention, no doubt the respondent - State is required to give reasonable opportunity of hearing or representation his case before passing the order of black listing the person concerned because it affects the rights of the petitioner or the person concerned. But in the present case, the petitioner has applied for character certificate from the D.S.P., Jamnagar and for issuance of video licence. From the assertions made in the rejoinder affidavit it appears that now the petitioner has no interest to do his business of video project. It also appears that the impugned order putting the petitioner in black list is a confidential order for the purpose of the office. Unless any prejudice is caused to the petitioner, that order cannot be said to be illegal as it does not adversely affects the fundamental rights of the petitioner and the petitioner has failed to show before this Court that any his right has been infringed due to the impugned order of blacklisting.

6. Learned counsel for the petitioner contended that under which provisions of law and authority of law the impugned order is passed against the petitioner is not disclosed by the respondents. As no law requires to pass such order under any law or authority, the impugned order is bad in law and is not sustainable in the eye of law and therefore the impugned order passed against the petitioner is illegal, arbitrary, unconstitutional and

against the principles of natural justice. In this connection, I may point out here that from the affidavit-in-reply it appears that the impugned order has not been prepared for the purpose of the Government and it has not been communicated to the petitioner at all and that does not infringe any fundamental rights of the petitioner. Moreover, the petitioner could not point out that any his right has been infringed. The respondent State is not required to give or assign any reason as to under what provisions of law or authority of law the impugned order has been passed as it is confidential not in the office file. So far as the principles of natural justices are concerned as it is , the petitioner is unable to show that any right has been infringed due to the impugned order passed against the petitioner. As such, the question of violation of principles of natural justice does not arise at all.

7. I do not find any merits in this petition. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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/JVSatwara/